NO. 81857-6

SUPREME COURT OF THE STATE OF WASHINGTON

COMMUNITY CARE COALITION OF WASHINGTON; HOME CARE OF WASHINGTON, INC.; THE FREDRICKSON HOME; CYNTHIA O'NEILL, a Washington Citizen and Taxpayer; RON RALPH and LOIS RALPH, husband and wife and Washington Citizens and Taxpayers,

Petitioners,

v.

SAM REED, Secretary of State,

Respondent,

and

LINDA LEE and PEOPLE FOR SAFE QUALITY CARE,

Intervenors/Respondents.

SECRETARY OF STATE'S RESPONSE TO AMICUS BRIEF OF THE INITIATIVE AND REFERENDUM INSTITUTE

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I. INTRODUCTION

Respondent, Secretary of State Sam Reed, submits this brief in response to the Amicus Brief of the Initiative and Referendum Institute.

II. ARGUMENT

The argument of Amicus (1) proceeds from an erroneous premise; (2) is contrary to statutes and constitutional provisions of which Amicus makes no mention; (3) is internally inconsistent; and (4) misstates the position of the Secretary of State.

A. Amicus Proceeds From An Erroneous Premise That Amicus Does Not Endeavor To Support

Amicus' argument proceeds from the premise that, based on a mistake in form language on signature petitions, the Secretary of State has the authority to convert an initiative filed by its sponsor as an initiative to the People, into an initiative to the Legislature. Put somewhat differently, Amicus' argument erroneously assumes that, despite the right of an initiative sponsor to choose the initiative measure that he or she proposes (RCW 29A.72.010), the Secretary of State can substitute a different type of initiative; one that the sponsor never chose to initiate or underwrite, based on mistaken petition language. As discussed more fully in Section B, Amicus does not even endeavor to consider the statutory framework

discussed in the Secretary's Brief of Respondent that refutes Amicus' unexamined assumption.

In addition to statutes that Amicus ignores, it also is evident from *Schrempp v. Munro,* 116 Wn.2d 929, 809 P.2d 1381 (1991), that the Secretary of State's authority is to determine the adequacy of petition language against the backdrop of the type of initiative proposed by the sponsor at the inception of the process. At issue in *Schrempp* was the adequacy of petitions for an initiative to the legislature, Initiative No. 120. The Court explained that the "petitions contained one erroneous phrase, 'to the people'". *Id.* at 938. By definition, a phrase in an initiative petition can only be "erroneous" if the type of initiative was established before the petition language was prepared. Thus, contrary to Amicus' view, RCW 29A.72.170(1) does not give the Secretary the option to choose whichever of the statutory form petitions that he wishes (RCW 29A.72.110, .120 or .130), as the appropriate measuring stick to determine the sufficiency of the petition. Rather, RCW 29A.72.170(1) directs the Secretary to determine whether the petitions are substantially in the form for the type of measure that the sponsor proposed at the inception of the initiative process. As *Schrempp* implicitly demonstrates, this determination only can be accomplished if the type of measure is established before the comparison is made. The Secretary's discretion is

limited to determining, in light of the type of measure that the sponsor proposed upon initiating the process, whether the petitions should be rejected because they are not substantially in the statutory form for that measure.

B. Amicus' Argument Ignores The Governing Statutory Framework

Amicus makes no effort to consider the statutory framework that demonstrates its position is fundamentally unsound. As Secretary Reed demonstrated in his Brief of Respondent, when governing statutes are considered individually and as a whole, the type of initiative proposed is and must be known at the outset of the initiative process. (Resp't Br. 41-44.) To commence the initiative process, initiative sponsors must file the measure that they propose with the Secretary of State. RCW 29A.72.010. The measure that the sponsor proposes includes, and must include, the type of measure that is proposed. Without such designation, it is not even possible to determine whether the initial filing is timely. RCW 29A.72.030 (providing different filing periods for initiatives to the people than for initiatives to the legislature). Without this designation, the measure cannot be assigned an identifying number as the law requires. RCW 29A.72.040 (requiring different numbering series based on the type of measure proposed.) And without this designation, it would not be

possible to determine whether the petitions are timely filed. Const. art. II, § 1(a) (specifying different petition deadlines for initiatives to the people than for initiatives to the legislature); RCW 29A.72.030 (same). Amicus' argument considers none of this.

As Secretary Reed also demonstrated in his Brief of Respondent, the contrary conclusion—that an initiative sponsor may change the type of initiative midstream by adopting erroneous petition language—invites abuse of the initiative process. And again, Amicus' argument considers none of this. Resp't. Br. 47-48.[1]

C. Amicus' Argument Is Internally Inconsistent

In one of its closing arguments, Amicus pleads that, "[t]o allow the proponents . . . of an initiative to arbitrarily change petitions after the fact from an indirect initiative to a direct initiative places political expediency above the law". Amicus Br. at 7. The Secretary of State agrees that allowing the sponsor of an initiative to change its type midstream could place political expediency above the law. But it is Amicus, not the Secretary of State, who argues for a result that would allow initiative

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[1] While paying virtually no attention to the governing statues, Amicus "supports" its position by quoting multiple times from a single newspaper editorial. Amicus Br. at 3-6. Appropriately enough, the editorial does not purport to be an examination of the law, or legal authority, and appropriately enough, the editorial relies in part on speculation and unexamined assumptions for the viewpoint that it expresses. Amicus' reliance on the editorial in what purports to be a legal argument, however, is inappropriate.

proponents to convert initiatives from one type to another by changing petition language. And accordingly, it is Amicus, not the Secretary of State, who invites the abuse of the initiative process that such a result would promote.

D. Amicus Misstates The Position Of The Secretary Of State

Amicus advises that counsel has read "all the available briefs." Mot. to File Amicus Br. at 2. It is odd, then, for Amicus to argue that the Secretary of State "apparently" assumes ignorance on the part of voters who signed petitions supporting I-1029. That is not the position of the Secretary of State, and it finds no support in arguments advanced by the Secretary of State to this Court.

As Secretary Reed actually argues, I-1029 and its petitions complied with all mandatory unequivocal requirements of the constitution and facilitating statutes for initiatives to the People. The Secretary acted within his discretion in concluding that I-1029's petitions also adequately satisfied RCW 29A.72.120, which provides that petitions supporting initiatives to the People must "be substantially in the following form." The fundamental purpose of an initiative petition is to provide voters with the opportunity to express their support for consideration of the measure. Const. art. II, § 1(a). The petitions for I-1029 fully provided this opportunity, and fully served this purpose. In contrast, advising voters of

the precise process by which the measure would be considered is substantially less significant. Both types of initiatives are presented for a vote of the people, unless an initiative to the Legislature is enacted exactly as proposed by its sponsor, obviating any need for a vote of the people. And the lesser significance of the precise process for consideration of the measure is further evidenced by the fact that, among the many matters unequivocally required to be contained in initiative petitions, the form language on which Amicus relies, is not included. Under the circumstances, the deviation of I-1029's petitions from the form set forth in RCW 29A.72.120 did not compel the Secretary to reject the petitions, and he acted within his discretion in declining the request of I-1029's opponents that he do so.

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III. CONCLUSION

For the reasons stated here and in the Brief of Respondent, the Court should dismiss this petition.

RESPECTFULLY SUBMITTED this 29th day of August 2008.

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STATE OF WASHINGTON)
) ss.
COUNTY OF THURSTON)

I, BECKY WALDRON, being first duly sworn on oath, depose and state as follows:

I am over the age of 18 years and am not a party to the within cause. I am a legal assistant in the Attorney General's Office and on this date I caused to be served a true and correct copy of Secretary of State's

Response to Amicus Brief of the Initiative and Referendum Institute on the following person(s):

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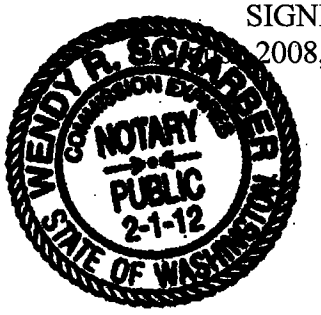
Becky Waldron

SIGNED AND SWORN to before me this 29th day of 2008, by Becky Waldron.



Wendy R Scharber
NOTARY PUBLIC in and for the State of Washington
My commission expires: 2.1.12